

**Federal Defenders  
OF NEW YORK, INC.**

Southern District  
52 Duane Street-10th Floor, New York, NY 10007  
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton  
Executive Director

Southern District of New York  
Jennifer L. Brown  
Attorney-in-Charge

July 20, 2020

**BY ECF AND EMAIL**

Honorable Lewis A. Kaplan  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 2240  
New York, New York 10007

**Re: *United States v. Nidal Ayyad*  
93 Cr. 180 (LAK)**

Dear Judge Kaplan,

I respectfully write on behalf of Nidal Ayyad to request that the Court order a *de novo* re-sentencing hearing in light of the Court's Order dated June 24, 2020, vacating Count 10 of the Indictment.<sup>1</sup> The Court indicated that an amended judgment will reflect its ruling. However, Mr. Ayyad has demonstrated an extraordinary record of post-sentence rehabilitation during his 27 years of incarceration which he hopes the Court will consider at a *de novo* re-sentencing, and subsequently impose a reduced sentence which reflects his contrition and rehabilitative efforts.

**Background Information**

Mr. Ayyad's case involves the 1993 World Trade Center bombing. After trial, he was convicted of two counts charging him with use of a weapon in furtherance of an act of violence (924C), as set forth in counts 9 and 10 of the Indictment. Mr. Ayyad was sentenced to terms of 30 years on each count to run consecutive to all other counts for which he a convicted. The total sentence imposed was 1,403 months.

---

<sup>1</sup> Mohammad Salameh does not join in this motion.

Honorable Lewis A. Kaplan  
United States District Judge  
Southern District of New York

July 20, 2020  
Page 2

**Re: *United States v. Nidal Ayyad*  
93 Cr. 180 (LAK)**

Mr. Ayyad subsequently filed a motion to vacate counts 9 and 10 under the authority of *United States v. Davis*, 139 S.Ct. 2319 (2019), and *United States v. Barrett*, 937 F.3d 126 (2d Cir. 2019). The Government moved to vacate Count 10 but opposed the defendant's motion under Count 9. In an Order dated June 24, 2019, the Court granted the motion to vacate Count 10 but denied the motion to vacate Count 9. The Court indicated that it would enter an amended judgment reflecting this ruling.

#### **A De Novo Re-Sentencing Hearing Is Required For Nidal Ayyad**

The Second Circuit has specifically held that when a re-sentencing results from a vacatur of a conviction, a *de novo* sentencing is the default rule. *United States v. Quintieri*, 306 F.3d 1217, 1228 n.6 (2d Cir. 2002) See also *United States v. Draper*, 553 F.3d 174, 184 (2d Cir. 2009) (conviction reversed on 2 counts which were dismissed requiring *de novo* re-sentencing). *Quintieri* considered the question as to whether conviction errors should result in a default rule of *de novo* re-sentencing versus sentencing errors for which the default rule would result in a limited sentencing. (*Id.*). The rule set forth in *Quintieri* was that where a count of conviction is overturned, as opposed to an aspect of a sentence, re-sentencing must be *de novo*; and *de novo* means "anew." *United States v. Rigas*, 583 F.3d 1108, 117 (2d Cir. 2009).

#### **CONCLUSION**

Mr. Ayyad requests that the Court conduct a full *de novo* re-sentencing hearing following the Court's Order vacating his conviction of Count 10 of the Indictment for which he was sentenced to a term of 30 years incarceration to run consecutive to all other counts. We respectfully request that the Court order a new Pre-sentence Report ("PSR") and allow the parties sufficient time to submit a Sentencing Memorandum following receipt of the new PSR.

Honorable Lewis A. Kaplan  
United States District Judge  
Southern District of New York

July 20, 2020  
Page 3

**Re: *United States v. Nidal Ayyad***  
**93 Cr. 180 (LAK)**

Respectfully submitted,

/S/  
Robert M. Baum  
Assistant Federal Defender

cc: Julianna Murray, Esq.  
Elinor Tarlow, Esq.  
Ryan B. Finkel, Esq.  
Assistant United States Attorneys